

**DIVISION OF FINANCIAL INSTITUTIONS  
STATE OF HAWAII**

IN THE MATTER OF THE	)	
APPLICATION OF	)	
	)	
CENTRAL PACIFIC FINANCIAL CORP.	)	DECISION AND ORDER
Honolulu, Hawaii,	)	REGARDING ACQUISITION
	)	OF CONTROL OF
Applicant,	)	CB BANCSHARES, INC.
	)	BY CENTRAL PACIFIC
For Approval to Acquire Control of	)	FINANCIAL CORP.
CB BANCSHARES, INC.	)	
Honolulu, Hawaii, Pursuant to	)	
Chapter 412, Hawaii Revised Statutes	)	
_____	)	

**DECISION AND ORDER REGARDING  
ACQUISITION OF CONTROL OF  
CB BANCSHARES, INC. BY  
CENTRAL PACIFIC FINANCIAL CORP.**

Pursuant to the authority granted to the Commissioner of Financial Institutions (the "Commissioner"), Division of Financial Institutions, State of Hawaii, in Chapter 412, Code of Financial Institutions, Hawaii Revised Statutes ("HRS"), and all applicable administrative rules, the following findings and conclusions are hereby entered:

## **FINDINGS OF FACT**

1. The financial institution holding companies in this matter are:
  - a. CENTRAL PACIFIC FINANCIAL CORP. ("CPF"), a Hawaii corporation, which is a registered bank holding company under the Bank Holding Company Act of 1956, as amended. CPF's principal office is located at 220 South King Street, Honolulu, Hawaii 96813.
  - b. CB BANCSHARES, INC. ("CBBI"), a Hawaii corporation, which is a registered bank holding company under the Bank Holding Company Act of 1956, as amended. CBBI's principal office is located at 201 Merchant Street, Honolulu, Hawaii 96813.
2. The principal subsidiary of CPF is Central Pacific Bank ("CPB"), a nonmember bank chartered by the State of Hawaii. CPB is the third largest commercial bank in the State of Hawaii. On June 30, 2003 CPB had total assets of \$2.1 billion and total deposits of \$1.7 billion.
3. The principal subsidiary of CBBI is City Bank ("CB"), a nonmember bank chartered by the State of Hawaii. CB is the fourth largest commercial bank in the State of Hawaii. On June 30, 2003 CB had total assets of \$1.7 billion and total deposits of \$1.2 billion.
4. CBBI also owns and operates Datatronix Financial Services, Inc. ("Datatronix"), a non-banking subsidiary.
5. By letter dated April 28, 2003, CPF submitted an application for prior approval to acquire at least 50.1% and up to 100% of the voting common stock of CBBI pursuant to HRS § 412:3-612, and for approval to indirectly acquire control of CB as a result of the acquisition of CBBI. CPF has submitted a number of additional letters, directly and through its attorneys, amending, supplementing and supporting its April 28, 2003 application (collectively the "Application").
6. Pursuant to the Application, CPF's offer to CBBI shareholders is \$22.27 in cash and 1.6005 shares of CPF common stock in exchange for each issued and outstanding share of CBBI common stock. The analysis and conclusions herein are predicated upon this offer price ("Offer Price").
7. In this transaction, CPF proposes to acquire at least a majority and up to 100% of the voting common stock of CBBI and thereby acquire indirect control of CB, as well as Datatronix.
8. CPF proposes to ultimately merge CBBI with CPF or a wholly-owned subsidiary of CPF and merge CB into CPB with CPB surviving the merger. CPF

acknowledges that it must file an application and seek additional approval by the applicable regulatory agencies for such mergers.

9. In its Application, CPF has requested confidentiality of certain portions of its application as provided by HRS § 412:2-104 and HRS § 412:3-603 and Hawaii Administrative Rules ("HAR") § 16-25-28.

10. The Commissioner has promptly forwarded to CBBI copies of the public portion of the Application as required by HRS § 412:3-612(d). Pursuant to that section, CBBI had ten days to submit relevant information to the Commissioner regarding the proposed acquisition. All such information submitted by CBBI was considered.

11. CPF's Application was accepted as complete by the Commissioner as provided in HRS § 412:3-603 and HAR § 16-25-9 on October 21, 2003. CPF was notified that the Application was deemed within the scope of, and subject to the notice and comment procedures of, HAR § 16-25-23 through §16-25-28.

12. CPF published notice of its intent to acquire control of CBBI ("Notice") in the Honolulu Star-Bulletin and filed a copy of the Notice with the Commissioner on October 24, 2003, as provided under HAR § 16-25-24.

13. Written comments and requests for an informational and comment proceeding on the Application were received by the Commissioner within the 15-day period after the publication of the Notice.

14. On November 10, 2003, the Commissioner ordered that an informational and comment proceeding be held pursuant to HAR § 16-25-26 and that the comment period on the Application be extended through the close of business December 8, 2003. The comment period was subsequently extended until the close of business December 12, 2003.

15. Pursuant to HRS § 412:3-603(5), the 60-day period in which the Commissioner is required to act on the Application after it is deemed complete was extended an additional 60 days to February 18, 2004.

16. The informational and comment proceeding was held on December 8 and December 9, 2003 ("Proceeding") at the State Capitol Auditorium, Honolulu, Hawaii. The purpose of the Proceeding was to allow the Commissioner and State of Hawaii Division of Financial Institutions' ("DFI") representatives to receive information and comments on the Application from interested persons as provided under HAR § 16-25-26. All written and verbal testimony submitted by the December 12, 2003 deadline was considered in connection with the Commissioner's review of the Application. At the Proceeding both oral and written testimony were submitted. The oral testimony, for the most part, came from current City Bank employees and long-standing customers, who expressed their strong opposition to any change. The

Commissioner and DFI representatives listened to their appeals and sympathized with their concerns. To the extent that such factors are relevant in evaluating the Application for the proposed acquisition in the context of HRS § 412:3-612(e), these were considered.

### **CONCLUSIONS OF LAW**

Upon consideration and review of the Application and its supporting and incorporated documents, it is concluded that:

1. Pursuant to Chapter 412, Code of Financial Institutions, HRS, the Commissioner has jurisdiction over this Application.
2. The Application submitted to the Commissioner is in a form prescribed by the Commissioner and includes, together with supporting and incorporated documents, information required by the Commissioner to make the findings of fact and conclusions of law set forth herein.
3. Sufficient information has been provided to enable the Commissioner to find the necessary facts and reach the required conclusions needed before issuing a decision on this Application.
4. By letter dated October 24, 2003, the Commissioner determined that the information for which confidential treatment was requested by CPF was deemed confidential and would not be made available to the public pursuant to HRS § 412:3-603, HRS § 412:2-104 and HAR § 16-25-28.
5. Upon consideration and review of all available information, it is concluded that there are no grounds to disapprove the proposed acquisition of control of CBBI by CPF pursuant to HRS § 412:3-612(e), and applicable rules and regulations.

### **ANALYSIS PURSUANT TO HRS § 412:3-612(e)**

HRS § 412:3-612(e) requires the Commissioner to review and analyze six factors in determining whether an acquisition of control should be disapproved. The analysis of these factors is set forth below.

1. The Commissioner finds that there are no grounds to disapprove the proposed acquisition of control based on HRS § 412:3-612(e)(1). It appears that CPF does not lack the overall experience, moral character or integrity required to acquire and control CBBI. HRS § 412:3-612(e)(1) provides as follows:

***The overall experience, moral character or integrity of any person who would acquire control of a Hawaii financial institution or financial institution holding company or become a financial institution holding***

***company indicates that it would not be in the interest of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company, or in the public interest, to permit the person to control the Hawaii financial institution or the financial institution holding company or to become a financial institution holding company***

In addition to HRS § 412:3-612(e)(1), HAR § 16-25-36(4) and HAR § 16-25-37 are relevant in evaluating the overall experience, moral character and integrity of CPF. HAR § 16-25-36(4) provides that in the case of an existing institution, management may be evaluated both from the standpoint of the institution's condition and the vantage point of management's past performance as reflected in the books and records of the institution, and based on previous examination reports and correspondence. HAR § 16-25-37 provides that, in the absence of credible evidence to the contrary, a director, officer, or controlling person is presumed to be of good character and sound financial standing.

Federal and State supervisory examination information and reports, as well as publicly available information, indicate that CPF effectively manages its subsidiary bank, CPB. CPF is well capitalized and its earnings have historically exceeded those of peer group institutions. CPF has had strong operating results over the last five years, with increased earnings, increased returns on average assets and increased returns on equity. A review of evaluations of CPF's management over an extended period confirms that CPF is an organization with management resources having an established record of positive earnings and operations over time.

There are other factors that support this finding. Individual members of CPF management have prior acquisition related experience. CPF's plans for integrating and managing the CPF and CBBI organizations appear adequate. In addition, CPF's subsidiary bank has management resources that have established positive records of accomplishment. There are also evident organizational similarities between the companies as both CPF and CBBI operate in the same market and offer comparable financial service products. Finally, the similarity of CPF's and CBBI's information technology platforms will facilitate the future integration of the institutions' accounts and records.

Pursuant to HAR § 16-25-37, it is presumed that CPF's management is of good character and sound financial standing, since there is no credible evidence to the contrary.

2. The Commissioner finds that there are no grounds to disapprove the proposed acquisition of control based on HRS § 412:3-612(e)(2). It appears that the proposed acquisition will not have a negative effect on the promotion of the convenience, needs and advantage of the general public in the community. HRS § 412:3-612(e)(2) provides as follows:

***The acquisition will not promote the convenience, needs, and advantage of the general public, particularly in the community in which the affected institution conducts its business***

In addition to HRS § 412:3-612(e)(2), HAR § 16-25-36(5) is also relevant in evaluating the convenience and needs of the community. This provides: “[a]n institution which is successfully and profitably operated, and which has a recognized place and established customer relationships in the community is presumed to promote the convenience and advantage of the community.”

Other factors considered in reviewing the impact of an acquisition on the convenience and needs of the general public are branch closings and the acquiring institution’s record of compliance with the Community Reinvestment Act (“CRA”).

a. CPF’s History of Success, Profitability and Established Customer Relationships in the Community

CPF is well capitalized and its earnings have historically exceeded those of peer group institutions. It has had strong operating results over the last five years, with increased earnings, increased returns on average assets and increased returns on equity.

Currently, CPF has an established relationship with its customers and it intends to maintain those relationships. CPF will offer its existing and new customers expanded products and services, either with no significant additional investment in costly infrastructure, i.e., loan products, ATM access, and trust and investment services, or with marginal cost requirements, i.e., lockbox, on-line banking, special business checking products, and credit card program options.

CPF plans to compare CBBI’s and CPF’s products and services and expects that for closely aligned products, it will convert the CBBI products to CPF products. For products that are not comparable and do not align closely, CPF will consider adding these CBBI deposit products based on profitability, number of accounts, difficulty in converting to the CPF product set, and the vendor/third party arrangements which support the products. For loan products, CPF will use the same process.

Provided that the proposed acquisition transaction, with its attendant legal, investment banking, and public relations costs, is not unnecessarily prolonged beyond a reasonable period of time, there is no indication that the combination of these two institutions would not continue to deliver successful and profitable results.

b. Effect of Branch Closings on the Convenience, Needs, and Advantage of the General Public in the Community

CPF has indicated that it plans to close CB's mainland offices, and that it anticipates closing approximately ten State of Hawaii branches of either CPB or CB which are in close proximity to each other. CPF has stated that the consolidation of branches in close proximity to one another will not inconvenience customers, and that CB customers will have access to an expanded branch network since the number of branches of the combined bank would nearly double. In addition, CB customers will have access to a larger ATM network, providing them access to additional non-branch ATMs where fees are waived for bank customers.

CPF has also indicated that it expects to allocate resources to expand into other areas in the State not currently served by either institution, and to accelerate entrance into target areas in rural Oahu and on the neighbor islands. CPF reiterated this by disclosing its December 7, 2003 plan to open a new branch for every overlapping branch that may be consolidated as a result of the proposed merger. CPF states that it will have the ability to "undertake a broad program to upgrade branch facilities and technology" and to establish more branches in under-banked locations throughout Hawaii sooner than either institution could do on its own.

Possible branch closings will not adversely affect the resulting number of branches, ATMs, and banking hours that will be available to CBBI customers. Therefore, there does not appear to be any indication that the convenience, needs and advantage of the general public and the community will not be promoted by this proposed acquisition.

c. CPF's Compliance with the Community Reinvestment Act

CPF's subsidiary bank, CPB, received an overall satisfactory CRA rating on its most recent CRA examination, with an outstanding rating on both the investment and service tests and a low satisfactory rating on the lending test. CBBI's subsidiary bank, CB, received an overall satisfactory CRA rating on its most recent CRA examination, with a high satisfactory rating on both the lending and service tests and a low satisfactory rating on the investment test. CPF states that the proposed combined institution could, in the future, achieve an outstanding overall CRA rating.

CPF has stated that it is willing to commit an additional \$1 million to support local community needs, while at the same time maintaining the current level of charitable contributions of both CPF and CBBI. CPF has also stated that it will form an advisory committee consisting of prominent community leaders, including members of the current CBBI board who do not join the board of the merged institution. The committee will advise CPF and CPB on matters of "local economic growth and cultural integrity." CPF has stated that it will seek to improve its lending rating and has set aggressive goals, established a dedicated CRA lending team, initiated a formal monitoring program, set

up training, and increased or added incentives for staff relating to CRA-eligible mortgages and small business loans.

Based on the overall satisfactory CRA ratings of both CPB and CB and the steps CPF has taken and proposes to take with respect to its CRA program, there does not appear to be any indication that the convenience, needs and advantage of the general public and the community will not be promoted by this proposed acquisition.

3. The Commissioner finds that there are no grounds to disapprove the proposed acquisition of control based on HRS § 412:3-612(e)(3). It appears that the effect of the proposed acquisition will not substantially lessen competition or tend to create a monopoly or restraint of trade in any part of this State. HRS § 412:3-612(e)(3) provides as follows:

***The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, and that these anti-competitive effects are not clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served***

In analyzing the effect of any particular transaction on competition, it is necessary to define both (1) the geographic market where the two entities are located and (2) the relevant product market in which the two entities compete.

a. Geographic Market

The primary geographic market in which both CPF and CBBI and their subsidiaries operate is the State of Hawaii. More discrete geographic markets for analyzing the competitive effects of an acquisition or merger proposal are local in nature. The State of Hawaii can be broken down into five local banking markets using the same criteria as that used by the United States Department of Justice (“DOJ”) and adopted by the Federal Reserve Board (“FRB”) and the State of Hawaii.<sup>1</sup>

CPF and CBBI have long competed directly in Honolulu, the largest of the five State of Hawaii banking markets. They now compete in all five: East Hawaii Island (Hilo), Honolulu, West-Maui, Kauai and, most recently, West Hawaii Island (Kailua-Kona). West Hawaii Island has not been included in this analysis due to insufficient available data.

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<sup>1</sup> See Bancorp Hawaii, Inc., 76 Federal Reserve Bulletin 759 (1990).



b. Product Market

The product market in which CPF's and CBBI's subsidiary commercial banks compete is defined as the *cluster* of products and services normally provided by financial institutions.

This view holds that the wide array of products and services offered by commercial banks form one product market – “commercial banking.” Under this approach it has not been considered significant that particular services (e.g. “targeted” small business lending) may be offered by the banks; instead, what is significant is the *cluster* of products and services that constitutes traditional banking functions. This *cluster* of bank products and services is an economically distinct product apart from the individual products and services involved. Studies support the conclusion that both businesses and households seek this *cluster* of services.<sup>2</sup>

Consistent with this concept, and on the basis of all the facts of record in the Application, the *cluster* of banking products and services would appear to represent the most appropriate and commonly utilized product market for analyzing the competitive effects of the proposed acquisition.

The use of deposit data as the proxy for the *cluster* of services provided by banks has been long-established and well-accepted by both the FRB and the DOJ to determine the market share for banks. Deposits reflect lending capacity, and lending capacity is critical to the actual competitive environment for all types of loans. Banks and other financial institutions have flexibility to change their asset deployment in response to changing market conditions. The availability of funds for lending, as represented by deposits, is traditionally considered the true measure of market share and the ability to deliver supply.

c. Analysis of Competition

The proposed acquisition of CBBI by CPF would combine these two Hawaii-based financial service competitors whose subsidiary banks are, as of June 30, 2003,<sup>3</sup> ranked fifth and fourth,<sup>4</sup> respectively, in terms of State of Hawaii depository institution

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<sup>2</sup> Cole and Wolken, *Financial Services Used by Small Businesses: Evidence from the 1993 National Survey of Small Business Finance*, 81 Federal Reserve Bulletin 629 (1995); Elliehausen and Wolken, *Banking Markets and the Use of Financial Services by Households*, 78 Federal Reserve Bulletin 169 (1992); Elliehausen and Wolken, *Banking Markets and the Use of Financial Services by Small-and Medium-Sized Businesses*, 76 Federal Reserve Bulletin 726 (1990).

<sup>3</sup> June 30, 2003 is used throughout as a common reference point for loan and deposit survey information unless otherwise noted.

<sup>4</sup> 1. Bank of Hawaii - 29%, 2. First Hawaiian Bank - 29%, 3. American Savings Bank - 19%, 4. CPB - 8.3%, 5. CB - 5.7%.

market share.<sup>5</sup> A post-acquisition combination of CPB and CB, resulting in a projected 14% share of the State of Hawaii depository institution market, would rank no higher than fourth in the total State of Hawaii market and would rank no higher than fourth in any of the individual local Hawaii markets in which it would operate.

In analyzing this data, the standard methodology used to determine the effects of a merger and/or acquisition transaction on competition is the Herfindahl-Hirschman Index (“HHI”). The DOJ, the FRB and the State of Hawaii use the HHI to review the competitive impact of mergers and acquisitions.

A banking merger is presumed not to have a significant adverse competitive effect unless *both* the post-merger HHI concentration level in the market is greater than 1800 points, and the increase in the HHI concentration level is greater than 200 points. The proposed transaction would not exceed the 1800/200 HHI deposit concentration guidelines.<sup>6</sup>

The concentrations present in these State of Hawaii local markets result from the market shares of the two major banks in the State – Bank of Hawaii and First Hawaiian Bank. In every local banking market in which CPB and CB compete, Bank of Hawaii and First Hawaiian Bank are in and will remain in first and second place for depository institution market share, and American Savings Bank, which was in third position in these markets prior to the proposed merger, will, if it is concluded, remain in third place.

Thus, using the geographic markets as defined above, and the *cluster* of banking products and services, as represented by deposit share, as the product market, it cannot be concluded that the effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly or restraint of trade relative to this *cluster* of banking products in any geographic market in this State.

While CBBI acknowledges the validity of the *cluster market* concept in assessing the competitive effects of a proposed merger, commenting that it is a “useful tool,”<sup>7</sup> it does contend that “. . . the existence of a “cluster market” clearly does not preclude an antitrust analysis of banking mergers on the basis of other market definitions – such as a “sub-market” for small business lending – when trade realities show that this may be the “area of effective competition” in which an adverse impact might be felt.”<sup>8</sup>

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<sup>5</sup> The Commissioner has considered the deposits of American Savings Bank (ASB), a savings bank, on a 100% weighted basis in its analysis based on ASB’s stated corporate strategy to provide a suite of products and services consistent with those provided by commercial banks.

<sup>6</sup> Deposit survey information as of June 30, 2002.

<sup>7</sup> Skadden, Arps, Slate, Meagher & Flom LLP, June 17, 2003 letter to State of Hawaii Attorney General; copied to the Acting Commissioner, DFI - State of Hawaii [DFI reference 03-04APP-026(43)]

<sup>8</sup> Ibid.

However, recent developments in this Hawaii small business lending “sub-market” have not only increased the number and diversity of the competitors in this sub-market, but have expanded the offerings and delivery channels utilized by both providers and users of this sub-market’s products and services.<sup>9</sup>

Further, a review of the information provided on this subject does not lead to the identification of a “*special* sub-market” for small business lending in which *only* CPF and CBBI compete, nor does it establish that small businesses served by these two organizations would be unable or unwilling to obtain acceptable small business specific products and services elsewhere in the Hawaii market should the CPF acquisition of CBBI take place.

It thus cannot be concluded that the effect of the proposed acquisition, using a product market defined as a small business lending “sub-market” or “*special* sub-market,” may be substantially to lessen competition or tend to create a monopoly or restraint of trade in any geographic market in this State.

4. The Commissioner finds that there are no grounds to disapprove the proposed acquisition of control based on HRS § 412:3-612(e)(4). It appears that the financial condition of CPF would not jeopardize the safety and soundness of CBBI nor will it prejudice the interests of CBBI’s, and its subsidiary bank CB’s, depositors, beneficiaries, creditors or shareholders. HRS § 412:3-612(e)(4) provides as follows:

***The financial condition of any person who would acquire control of a Hawaii financial institution or a financial institution holding company or become a financial institution holding company may jeopardize the safety and soundness of the Hawaii financial institution or the financial institution holding company or prejudice the interests of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company***

In addition to HRS § 412:3-612(e)(4), HAR § 16-25-36(1), (2) and (3) are relevant in evaluating the financial condition of CPF with respect to the impact of its proposed acquisition on the safety and soundness of CBBI, its subsidiary bank, CB, and the interests of their depositors, beneficiaries, creditors, or shareholders.

Financial history and condition of an institution is one factor analyzed in determining safety and soundness. The successful financial history of an operating institution is usually reflected in its present condition. Federal and State supervisory examination reports, as well as publicly available information, indicate the value and quality of CPF’s and its subsidiary bank’s assets are satisfactory and on a par with that

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<sup>9</sup> Sullivan & Cromwell LLP, June 20, 2003 letter to Acting Commissioner, DFI - State of Hawaii. [DFI reference 03-04App-026(49)]

of comparable institutions. There is no indication of factors which could negatively affect CPF's or CPB's condition. Therefore, the financial condition of CPF would not appear to jeopardize the safety and soundness of CBBI or CB, nor prejudice the interests of their depositors, beneficiaries, creditors, or shareholders.

Capital adequacy is an essential consideration in evaluating the financial condition and safety and soundness of a financial institution. CPF is currently well capitalized, its pro forma financial statements show that it will continue to be well capitalized, and CPF has committed to remain well capitalized after the proposed acquisition takes place. A review of CPF's pro forma financial projections indicates that CBBI and its subsidiary bank should also remain well capitalized immediately after the consummation of the proposed acquisition. CPF's projections include estimates of deposit and loan runoff, as well as anticipated savings, including reductions in operational expenses due to branch closings and personnel layoffs, resulting from the planned merger of the banks. In evaluating the impact of these projections on the safety and soundness of the merged CPF/CBBI and their subsidiary banks, the Commissioner has considered the effects of the CPF Chairman's Proceeding testimony concerning layoffs and branch closures.<sup>10</sup>

CPF bases its financial projections on the assumption that it will acquire 100% of the fully diluted shares of CBBI's common stock at the Offer Price. CPF's financial projections do not include the possible consequences if CBBI's shareholders rights plan is triggered. Under CBBI's corporate bylaws, its shareholders are entitled to certain rights ("CBBI Shareholder Rights Plan") against bidders not approved by CBBI's Board of Directors. The CBBI Shareholder Rights Plan allows those shareholders who do not support CPF's offer to receive rights to purchase additional shares of CBBI and any successor corporation's stock at a deep discount. The triggering of the CBBI Shareholder Rights Plan would make it more costly and difficult for any acquirer to take over CBBI. CPF has stated that it will not consummate the proposed transaction unless the CBBI Shareholder Rights Plan is neutralized.

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<sup>10</sup> On December 8, 2003, at the Informational and Comment Proceeding held to consider the Application, CPB Chairman, Clinton Arnoldus, reiterated CPF's pledge made a day earlier in a published news release, that except for certain senior executives of CB, it would not lay off any employees as a result of any bank merger. The CPF announcement also said that it would open a new branch in underserved areas for each branch closed by the planned bank merger. CPF had previously indicated in the Application that the combined bank could close up to 10 overlapping CPF or CB branches. In its announcement, CPF explained that various factors, such as natural attrition, a hiring freeze currently in effect at CPB, and the reassignment and retraining of existing employees, would allow it to maintain its no layoffs pledge, with no material adverse impact to the projected earnings of the combined entity.

CPF's pro forma financial statements, submitted in support of the Application, assumed that a merger of the banks would result in approximately \$16 million in cost savings due to branch consolidations and employee layoffs. Even if all of the estimated \$16 million in branch and employee cost savings is excluded, "revised" CPF pro forma financial statements reflect that CPF would still be above the "well-capitalized" thresholds.

Also, under the Hawaii Business Corporation Act, Chapter 414, HRS, dissenting CBBI shareholders are entitled to the “fair value” of their shares in the event of a merger. CPF has stated that it is unable to estimate the potential number of dissenting CBBI shares or what the ultimate cost may be to acquire the remaining shares from any dissenting CBBI shareholders opposed to the merger. The Commissioner has concluded that projecting the impact of dissenting CBBI shareholders is speculative; thus not meaningfully productive in the context of the Application process. Moreover, CPF has agreed to provide the Commissioner with detailed projections after it files its application to merge the holding companies, and to raise additional capital to ensure that CPF and the surviving bank would remain well capitalized, after giving effect to all payments made to any dissenting CBBI shareholders.

Funding for CPF’s tender offer will come from cash and dividends upstreamed from CPB and proceeds from the issuance of trust preferred securities (“TPS”). While recent accounting opinions have raised questions concerning the effect of TPS on regulatory capital, federal banking regulators have not yet issued definitive supervisory guidance concerning the use of TPS for regulatory capital purposes. In the event that TPS would no longer qualify for treatment as regulatory capital, CPF has described alternative strategies that will allow it to acquire CBBI, while still keeping both institutions well capitalized.

Further, both CPF and CBBI have filed lawsuits concerning the proposed acquisition. The ultimate outcome of these lawsuits cannot be readily determined at this time nor can an estimate be made of how long the legal process may take to resolve these matters. Both institutions have spent a considerable amount of money contesting this transaction. While these amounts do not currently pose a significant threat to the regulatory capital of either institution, the uncertainties and delays arising from a protracted legal battle could adversely impact the financial resources and future earnings prospects of both organizations.

In evaluating all of these elements and contingencies, CPF appears to be well capitalized and the acquisition of control would not appear to jeopardize the safety and soundness of CBBI or CB, nor prejudice the interests of their depositors, beneficiaries, creditors, or shareholders.

The earnings capability of an institution, as reflected in its earnings record and its future earnings prospects, is another factor to consider in determining safety and soundness. CPF’s earnings have historically exceeded those of peer group institutions. It has had strong operating results over the last five years, with increased earnings, increased returns on average assets and increased returns on equity. There is no indication CPF’s strong operating revenues will not be maintained in the future after the proposed acquisition takes place.

Based on these considerations, the interests of depositors, beneficiaries, and creditors of CBBI or CB will not be jeopardized as all of the existing debts, contractual obligations, and duties of CBBI or CB, will become legally binding on CPF.

5. The Commissioner finds that there are no grounds to disapprove the proposed acquisition of control based on HRS § 412:3-612(e)(5). It appears that the proposed acquisition will not be unfair and unreasonable to depositors, beneficiaries, creditors or shareholders of CBBI or CB. HRS § 412:3-612(e)(5) provides as follows:

***Any plan or proposal to liquidate, merge or consolidate, or make any other major change in the business, corporate structure, or management of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries is not fair and reasonable to the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries.***

a. Fair and Reasonable to Depositors

Pursuant to the preceding analysis of the criteria related to HRS § 412:3-612(e)(4), the financial condition of CPF would not appear to jeopardize the safety and soundness of CBBI or CB. CPF has further indicated that, to the extent these criteria relate to the protection of uninsured depositors, the combined company will be a well capitalized, stronger bank. There are, therefore, no indications that the transaction will be unfair or unreasonable to depositors in this respect.

CPF has stated that, upon completion of the merger, it does not expect to alter relationships between the combined organization and the CBBI customers in any material respect. CPF also indicated it has no current intention to change account terms for any CB depositor in an adverse manner.

Based upon CPF's assertions that it has no intention to adversely change account terms for CB depositors, that CB customers will have access to an expanded branch and ATM network, and that the increased size and financial strength of the combined institution will allow it to offer expanded products and services (see foregoing analysis of HRS § 412:3-612(e)(2) criteria regarding convenience, needs and advantage), there are no indications that this transaction will be unfair and unreasonable to depositors.

b. Fair and Reasonable to Beneficiaries

CPF stated it believes this term refers to interests of beneficiaries of trusts managed by the banking organization. Based upon this definition, CPF indicates that because CB lacks trust powers, the question of fairness to beneficiaries is not directly relevant. CPF has observed that CB's customers will benefit overall because CPF

offers trust powers. The Commissioner finds that as CBBI and CB lack trust powers, the question of fairness to beneficiaries is moot.

c. Fair and Reasonable to Creditors

CPF has stated that there will be no change in the terms of any obligation of CBBI or CB to their creditors and there appears to be no reason to conclude that the proposed transaction will be unfair to creditors as a group. CPF has indicated that it expects it will review all vendor relationships prior to the merger and eventually consolidate or eliminate duplicate functions.

Testimony presented and/or submitted in connection with the Proceeding reflected concerns that vendors, including lessors, would lose jobs and/or tenants. However, none of the comments reflected concerns that CPF would unfairly or unreasonably terminate existing CBBI contracts or leases.

Pursuant to the preceding analysis of the criteria related to HRS § 412:3-612(e)(4) which indicates that the financial condition of CPF will not jeopardize the safety and soundness of CBBI or CB, there are also no indications that the transaction will be unfair or unreasonable to creditors due to financial risk. Further, based upon CPF's assertions that there will be no change in the terms of any obligation of CBBI or CB to their creditors, there are no indications that the transaction will be unfair and unreasonable to creditors in other respects.

d. Fair and Reasonable to Shareholders

CPF's offer represented a premium in excess of 50% over CBBI's share price at the time the offer was announced. This premium compares favorably with the reported average premiums for similar commercial bank acquisition transactions. Evaluation of the offer's pricing multiples discloses that the proposed acquisition falls within a range of comparable transactions.

There are no indications that the transaction will be unfair and unreasonable to shareholders. The final determination of whether the transaction is fair and reasonable to shareholders will be made by the CBBI shareholders themselves as their approval, either through a shareholder vote or through the tender offer process, will be necessary to consummate the proposed acquisition.

6. The Commissioner finds that there are no grounds to disapprove the proposed acquisition of control based on HRS § 412:3-612(e)(6) which provides as follows:

***The acquiring person has failed or refused to furnish information requested by the commissioner.***

The Commissioner finds that all information requested by the Commissioner was provided in a reasonable and timely manner.

### **ORDER**

NOW, THEREFORE, GOOD CAUSE APPEARING, THE FOLLOWING DECISION AND ORDER IS HEREBY ENTERED:

1. In accordance with HRS § 412:3-612, approval is hereby granted to CPF to acquire control of CBBI and thereby indirectly to acquire control of CB and Datatronix in accordance with the terms of the Application.

2. This Decision and Order is entered on the date set forth below.

3. This approval is made pursuant to the authority granted the Commissioner in Chapter 412, HRS, and applicable administrative rules, and is subject to the following conditions:

- a. CPF obtains all the necessary federal and/or state regulatory approvals and complies with all requirements, conditions, and limitations imposed by federal and state laws with respect to this transaction.
- b. CPF complies with terms and conditions of the “Federal Reserve System, Central Pacific Financial Corp., Order Approving the Acquisition of a Bank Holding Company” dated December 15, 2003.
- c. CPF, if it proceeds with a tender offer, proceeds with the tender offer pursuant to the terms and representations set forth in the Application, i.e., that it completes the transaction conditioned upon there being validly tendered, and not withdrawn prior to the expiration of the offer, a number of shares of CBBI common stock, which will constitute at least 75% of the total number of outstanding shares of CBBI common stock on a fully diluted basis.
- d. CPF complies with the conditions of this Decision and Order and all representations made in the Application. In the event of any



material change in the transaction, such as a material change in the price, financing terms, conditions, or structure of the transaction, or an inability to complete all the aspects of the transaction as proposed, CPF must consult with the Commissioner to determine whether the change is consistent with the Commissioner's action in the Application, or whether further action is necessary. The Commissioner reserves the right in the event of significant changes in the transaction to require a new application from CPF.

- e. CPF provides a written report, to be received by the Commissioner every 30 days following the issuance of the Decision and Order, detailing the acquisition related activities for that period and certifying that the acquisition is proceeding in accordance with the Application and this Decision and Order. The Commissioner reserves the right to alter the nature and content of this written report and may discontinue this requirement upon written notice to CPF.
- f. CPF completes this transaction within six months from the date of issuance of this Decision and Order. Upon receipt of a written request from CPF, and for good cause, the Commissioner may consider granting an extension of the time period, such extension not exceeding an additional six months, for a maximum limit of 12 months from the date of this Decision and Order pursuant to HRS § 412:3-612(f).
- g. CPF, within 30 days following the effective date of the acquisition of control, provides written notice to the Commissioner attesting to the completion of this transaction in accordance with the Application and the conditions in this Decision and Order.
- h. CPF provides the name, address, and phone number of an individual to whom all inquiries regarding this transaction can be referred and whom the public may contact should they have any questions regarding this transaction.

This Decision and Order shall be voidable at the sole discretion of the Commissioner if conditions set forth in this Decision and Order are not fulfilled, if material representations made in support of the Application are not complied with or should be determined to be untrue, or if material facts have been omitted from the Application.

DATED AND ENTERED: Honolulu, Hawaii, February 3, 2004.

/s/ D.B. Griffin III  
D.B. GRIFFIN III  
COMMISSIONER OF FINANCIAL INSTITUTIONS  
DIVISION OF FINANCIAL INSTITUTIONS  
STATE OF HAWAII

[IN THE MATTER OF THE APPLICATION OF CENTRAL PACIFIC FINANCIAL CORP.,  
HONOLULU, HAWAII, APPLICANT, FOR APPROVAL TO ACQUIRE CONTROL OF CB  
BANCSHARES, INC., HONOLULU, HAWAII, PURSUANT TO CHAPTER 412, HAWAII  
REVISED STATUTES.]